IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2007

CORAM

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Writ Petition No. 18795 of 2001

V.Perumal ... Petitioner

vs

1.Union of India rep. by
the Senior Divisional Operation's Manager,
Traffic Branch, Southern Railway,
Madurai-10.

2.The Divisional Railway Manager,
Madurai Division, Southern Railway,
Madurai-10.

3.The Chief Operation's Manager,
General Managers Officer,
Southern Railway, Park Town,
Chennai-3. ... Respondents.

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of the Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in No.U/T-5/Misc./8/92 dated 12.5.1993 confirmed in O.A.No.676/98 before Central Administrative Tribunal dated 13.09.2000 and quash the same and direct the respondents to sanction the due increments, refix the pay and disburse all arrears of salary including all consequential benefits on account of the impugned proceedings.

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For Petitioner : Mr.P.Kannan for
M/s.P.T.S.Narendravasan
For Respondents : Ms.Aparna Nandakumar
Standing Counsel for Railways.

O R D E R

(Order of the Court was made by F.M.IBRAHIM KALIFULLA,J.)

The petitioner, who is aggrieved against the order of the Central Administrative Tribunal dated 13.09.2000 passed in O.A.No.676 of 1998, has come forward with this petition.

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2. The petitioner was working as Station Master of Virudhunagar Junction at the relevant point of time. On 01.04.1992, he was performing duty in the South Cabin at 20 to 24 hours at Virudhunagar Junction. While so, he was stated to have permitted despatch signals to be taken off for Passenger Train No. 109 to leave from road 4 without ensuring the setting and locking of points for correct route to enable the said train to enter Maniyachi Junction side instead of Tenkasi Junction side. As the said conduct of the petitioner was in violation of the Provisions of GR 338(a) and (B) of the relevant rules, he was issued with a Memorandum of Charge dated 27.08.1992. The petitioner submitted his explanation dated 25.01.1993. Thereafter, an enquiry was held in which the petitioner participated. The petitioner asked for the Combined Train Report and the relevant Control Chart of that day in one of his letters dated 29.10.1992. The petitioner was permitted to peruse the records and he also perused the same on 10.11.1992. The petitioner asked for some more documents. The 1st respondent/Railways took the stand that such documents were not relevant and therefore, not necessary. Thereafter, the Disciplinary Authority, considering the petitioner's explanation, imposed a minor penalty in exercise of his power under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968, and thereby his annual increment was withheld for a period of 36 months, which was otherwise due on 01.08.1993. The order of punishment was dated 12.05.1993. The petitioner preferred an appeal and the Appellate Authority, by his order dated 06.09.1994, confirmed the punishment imposed on the petitioner. The petitioner also preferred a revision to the Personnel Branch of the Headquarters at Chennai, which was also disposed of on 26.02.1998 and the Revisional Authority also declined to interfere with the punishment.

3. The petitioner preferred O.A.No.676 of 1998 on the file of the Central Administrative Tribunal contending that no such incident as alleged against him happened on 01.04.1992 between 20 - 24 hours and therefore, in the absence of the relevant records disclosing the happening of such an incident, merely based on the oral version of the authorities, the Disciplinary Authority ought not to have inflicted the punishment on the petitioner. The petitioner's application was resisted by the respondents/railways contending that after the occurrence on 01.04.1992, a Joint Fact Finding Enquiry Committee was constituted comprising of Foreman 'B'/Diesal/Virudhunagar, Traffic Inspector/II/Madurai and Signal Inspector/I/Virudhunagar by the Divisional Safety Officer/Madurai to enquire into the incident and that the Committee held an enquiry on 29.05.1992, where the petitioner was enquired and his statement was recorded. It is also stated that except the petitioner, all others, who were examined by the Committee, accepted the occurrence that took place on 01.04.1992. The respondents/Railways further stated that based on the enquiry report of the said Committee, as the Disciplinary Authority was satisfied about the proved misconduct committed by the petitioner, passed the order of punishment dated 12.05.1993 and since the same has been confirmed by the Appellate Authority as well as the Revisional Authority, no interference was called for. Even before the Tribunal, the petitioner reiterated his contention that in the absence of the production of the Combined Train Report and the Control Chart, the misconduct alleged against him cannot be said to have been proved. The Tribunal, however,

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rejected the contention of the petitioner and held as under in paragraph No.7 of the order passed in O.A.No.676 of 1998:-

> " 7. An analysis of this statement of the respondents would go to show that responsible officers like Foreman 'B'/Diesal/ Virudhunagar, Traffic Inspector/II/Madurai and Signal Inspector/I/Virudhunagar have inquired into the incident and the committee held the enquiry and also the applicant was present and all the persons participated in the enquiry and all the persons who participated in the enquiry confirmed that the applicant has not exercised proper care and caustion in giving the signalling. Therefore, when once the responsible officer of the department has filed the reply stating the above facts, there is no reason to doubt the same. In fact it is seen from this that in addition to the applicant the Guard also is responsible in trying to help the applicant. Mere technicalities should not stand in the way of the disciplinary action taken against the delinquent by the administration. This a serious case where the Train has come on the wrong line and something would have happened resulting in loss of life and property. There is no necessity to frame a false charge against the applicant by any of the officers of the Railways. The applicant has not specifically pleaded anywhere that any of the Railway officers are biased against him and prejudiced against him and had some malice against him and therefore, he was implicated in this case. Therefore, the reasonable conclusion has to be arrived at on the basis whether an ordinary prudent person would accept existence of such facts is stated to be the proof under Section 3 of the Evidence Act. Therefore, though the standard of proof accepted in a departmental enquiry is not as that of the proof either in the criminal or civil cases keeping in view the reasonable standard of proof accepted even in the departmental enquiry, this a case where the circumstances are absent to come to the conclusion that the alleged incident is fabricated, as the assertions made in the reply would clearly go to show that this is the thing that has happened and the department took the necessary action against the concerned in public interest."

4. We have heard the learned counsel for the petitioner as well as the Standing Counsel for the respondents/Railways.

5. Mr.Kannan, learned counsel for the petitioner, contended before us that the the respondents/Railways deliberately failed to produce the Combined Train Report and the Control Chart as that would have otherwise revealed that no incident as alleged against the petitioner had taken

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place on that day. The learned counsel further contended that in the absence of any acceptable material evidence, merely on the basis of the oral version of the contesting respondents, the petitioner ought not to have been punished.

6. On the other hand, Ms.Aparna Nandakumar, learned Standing Counsel for the contesting respondents, contended that the petitioner was holding a very vulnerable post, that onerous responsibility was reposed on the petitioner to ensure that trains which enter and leave Virudhunagar Junction move in the proper track and that any violation in the discharge of such onerous responsibility will result in far-reaching consequences including heavy loss of life and therefore, the misconduct alleged against the petitioner and as found proved by the Disciplinary Authority based on which the punishment imposed was rightly not interfered with by the Tribunal. The learned Standing Counsel, therefore, contended that when none of the authorities had any grudge against the petitioner and when there were enough oral evidence of the other persons, who were on duty on that day, who confirmed the incident, there was no reason to disbelieve their version and therefore, the order of the Tribunal should not be interfered with.

7. We find force in the contention of the learned Standing Counsel for the contesting respondents. This is not a case of no evidence. According to the petitioner, there is lack of enough material to find the petitioner guilty of the charge levelled against him. In disciplinary matters, the Honourable Supreme Court has held that there need not necessarily be overwhelming evidence in proof of the misconduct and what is required is some evidence that would link the delinquent to the probable extent of misconduct alleged against him. In this context, it will be worthwhile to refer to the decision of the Honourable Supreme Court reported in STATE OF HARYANA -vs- RATTAN SINGH (1982 (1) L.L.J. Page 46:- which reads as under:-

> "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and creditability. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition, it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusion reached, such finding, even though of a domestic Tribunal, cannot be held good. The simple point is,

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was there some evidence or was there no evidence – not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny.

8. When we apply the above principle to the case on hand, it is seen that immediately after the occurrence on 01.04.1992, a Special Committee was constituted, which enquired into the incident on 29.05.1992. The said Committee recorded the statements of all those persons including the petitioner herein, who were on duty on 01.04.1992. The Committee has submitted a report stating that except the petitioner, all other persons admitted the occurrence that took place on 01.04.1992. It is not in dispute that as Cabin Station Master, it is the overall responsibility of the petitioner to ensure, before permitting any train to take off from the station, that such train enters the correct track. Therefore, when the petitioner was in the ultimate control of the station on that day, it is quite probable that the petitioner himself managed not to enter the incident in any of the records with the aid of others working under him. But as rightly held by the Tribunal, when none of the Committee Members, who enquired into the incident or the other personnel who admitted the occurrence, had any axe to grind against the petitioner, merely because the petitioner alone took the stand that no such occurrence took place on that day, the proceedings against the petitioner should be set at naught, when the alleged act of the petitioner, which was otherwise found proved, being a grave one, as contended by the Standing Counsel for the contesting respondents, there would have been every scope for any serious mishappening taking place. It was to every ones furtune that no such untoward incident or any accident had taken place on that day. Therefore, as held by the Tribunal, even in public interest, it is just and proper that the action of the respondents/Railways in having proceeded against the petitioner and the infliction of the punishment based on the enquiry report of the Committee is not interfered with. In our opinion, the petitioner, being the Station Master, who was under overall control of Virudhunagar Junction on that day ought to have owned moral responsibility, instead of attempting to wriggle out of the act alleged against him. Such an attitude adopted by the petitioner can never be supported or countenanced. We are, therefore, convinced that the order of punishment dated 12.05.1993, as confirmed by the Appellate Authority and the Revisional Authority as well as by the Central Administrative Tribunal, does not call for interference. In any event, we find that though the act alleged against the petitioner and found proved was quite serious, yet the respondents/Railways were lenient in the imposition of punishment by merely withholding the increment, which is a minor punishment. In fact, such conducts have been found to be very serious misconduct and this Court has held, in the decision reported in ROYAL PRINTING WORKS -vs- INDUSTRIAL TRIBUNAL, MADRAS AND ANOTHER (1959 II L.L.J. Page 619), that interference with punishment in such cases will amount to misplaced sympathy. The penultimate paragraph of the judgment is relevant for our purpose, which reads as under:-

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"There are certain passages in the order of the

> Tribunal which as I understand them suggest that carelessness on the part of an employee in relation to his work would not justify serious punishment. With this view, I definitely disagree. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. I shall not refer to the classic example of the sentry who sleeps at his post and allows the enemy to slip through. There are other more familiar instances. A compositor who carelessly places a plus sign instead of a minus sign in a question paper may cause numerous examinees to fail. A compounder in a hospital or chemist's shop who makes up the mixtures or other medicines carelessly may cause quite a few deaths. The man at an airport who does not carefully filter the petrol poured into a plane may cause it to crash. The railway employee who does not set the point carefully may cause a head-on collision. Misplaced sympathy can be a great evil. Carelessness and indifference to duty are not the high roads to individual or national prosperity."

The said judgment was also confirmed by the Division Bench of this Court in the decision reported in ROYAL PRINTING WORKS -vs- INDUSTRIAL TRIBUNAL, MADRAS AND OTHERS (1963 (2) L.L.J. Page 60).

9. Having regard to our above conclusions, we do not find any merit in this writ petition. Accordingly, the writ petition is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.Union of India rep. by
the Senior Divisional Operation's Manager,
Traffic Branch, Southern Railway,
Madurai-10.

2.The Divisional Railway Manager,
Madurai Division, Southern Railway,
Madurai-10.

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3.The Chief Operation's Manager,
General Managers Officer,
Southern Railway, Park Town,
Chennai-3.

1 cc To Mrs.Aparna Nadakumar, Advocate, SR.36912.

W.P.No.18795 of 2001

SKV(CO)
RVL 04.07.2007

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